

Board of Adjustment



Minutes

City Council Chambers, Lower Level
June 8, 2010

Board Members Present:

Garrett McCray, Chair
Scott Thomas, Vice Chair
Nicholas Labadie
Greg Hitchens
Dianne von Borstel
Tyler Stradling

Staff Present:

Angelica Guevara
Mia Lozano-Helland
Lesley Davis
John Wesley
Gordon Sheffield

Board Members Absent:

Judah Nativio - unexcused

Others Present:

Lorraine Corsaco
John Balcer
Mike Columbo
Frank Grace
Thomas Torrez
John Nichter

The study session began at 4:30 p.m. The Public Hearing meeting began at 5:30 p.m. Before adjournment at 6:50 p.m., the following items were considered and recorded.

Study Session 4:30 p.m.

- A. The items scheduled for the Board's Public Hearing were discussed.
- B. A Zoning Ordinance update was provided by Mr. Sheffield that included a discussion of the changes to telecommunication facilities. Mr. Sheffield also reviewed the public workshop schedule and locations.
- C. The election of officers was conducted. Boardmember von Borstel motioned to retain the current officers; Chair Garrett McCray and Vice-Chair Scott Thomas seconded by Boardmember Stradling.
Vote: 6-0

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Public Hearing 5:30 p.m.

- A. Consider Minutes from the May 11, 2010 Meeting A motion was made to approve the minutes by Boardmember Thomas and seconded by Boardmember von Borstel. Vote: Passed 6-0 (Nativio absent)
- B. Consent Agenda A motion to approve the consent agenda as read was made by Boardmember von Borstel and seconded by Boardmember Labadie. Vote: Passed 6-0 (Nativio absent)

**Board of Adjustment Meeting
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Case No.: BA10-013

Location: 256 East Broadway Road (PLN2010-00058)

Subject: Requesting a Special Use Permit to allow auto repair and vehicle sales in the TCB-2 zoning district. **(Continued from the May 11th, 2010 meeting)**

Decision: Continued to the July 13, 2010 meeting.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel seconded by Boardmember Labadie to continue BA10-013 to the July 13, 2010 meeting.

Vote: Passed 6-0

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Case No.: BA10-020

Location: 845 East Grandview Street (PLN2010-00081)

Subject: Requesting a variance to: 1) allow a shade structure encroach into a required setback; 2) a detached accessory structure to exceed the maximum height allowed in a side yard; and 3) a detached accessory structure to exceed the maximum floor area allowed in a side yard, all in the R1-7 zoning district. **(Continued from the May 11, 2010 meeting)**

Decision: Continued to the July 13, 2010 meeting.

Summary: John Balcer, the property owner, represented the case and summarized the request and the circumstances that led up to the variance request. He also stated that they are willing to make some modifications to the shade structure to gain approval. Chair McCray asked Mr. Balcer about the adjustment he was willing to make. Discussion ensued with Mr. Balcer stating that he plans to cut off a portion of the shade structure to comply with the required 6' from the existing residence to qualify as a detached structure.

Lorraine Corsaco, the daughter of the adjacent homeowner on the west side, stated that the structure is too close to the property line. She also feels that the total square footage is too large and does not feel that Mr. Balcer's most recent proposal is not fully acceptable. Boardmember Labadie asked Ms. Corsaco what specifically were her issues with the size of the structure. Ms. Corsaco stated that the closeness of the structure allows cigarette smoke from individuals smoking under the structure to enter her mother's house if her windows on that side are open.

Mike Columbo, was in agreement with Ms. Corsaco and stated he had nothing more to add.

Mr. Sheffield stated that the structure does not meet code and there are no special circumstances or conditions that would justify the variance requested. Chair McCray asked; in addition to creating the 6' separation what else would need to occur to gain compliance. Mr. Sheffield stated that the structure would have to be reduced in size to 150 sq. ft., and the maximum height could not exceed 8 ft. (at the highest point). Boardmember Labadie asked what would be required if the structure is modified so that it is 6' from the residence and considered a detached structure. Mr. Sheffield responded that in order for the structure to be at its present size and height it would need to be located in the rear one-quarter (1/4) of the lot. Discussion continued regarding the size of the lot, the location of the structure and possible options for compliance.

Boardmember Hitchens commented that the request was for an extreme overage and also had a neighbor in opposition. He would be able to support some overage in floor area, but not double as requested.

Mr. Balcer stated that moving the structure to the rear ¼ was not financially feasible. He agreed that he would be willing to reduce the size and height if he was allowed to keep the structure in the current location. Mr. Sheffield suggested continuing the case another 30 days to get a more specific site plan with accurate dimensions. Chair McCray stated that

the revised design must be to scale so that the Board has a clear plan to review.

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Motion: It was moved by Boardmember Hitchens, seconded by Boardmember Labadie to continue BA10-020 to the July 13, 2010 meeting.

Vote: Passed 6-0

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Case No.: BA10-021

Location: 1336 East Harvest Street (PLN2010-00088)

Subject: Requesting a variance to allow an addition to encroach into a required setback in the R1-6 zoning district. **(Continued from the May 11, 2010 meeting)**

Decision: Continued to the July 13, 2010 meeting.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Vote: It was moved by Boardmember von Borstel seconded by Boardmember Labadie to continue BA10-021 to the July 13, 2010 meeting.

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Case No.: BA10-030

Location: 313 South Pioneer Street (PLN2010-00106)

Subject: Requesting a Substantial Conformance Improvement Permit to allow the division of land in the R-3 zoning district. **(Continued from the May 11, 2010 meeting)**

Decision: Continued to the July 13, 2010 meeting.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel seconded by Boardmember Labadie to continue BA10-030 to the July 13, 2010 meeting.

Vote: 6-0

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**Board of Adjustment Meeting
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Case No.: BA10-033 (PLN2010-00096)

Location: 125 West Main Street

Subject: Requesting a variance to allow signage to exceed the maximum area allowed in the TCC zoning district.

Decision: Withdrawn

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to withdraw BA10-033.

Vote: Passed 6-0

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Case No.: BA10-034

Location: 1237 North 66th Place (PLN2010-00130)

Subject: Requesting a variance to allow an accessory structure to exceed the maximum floor area allowed for a detached structure in the rear yard in the R1-9 zoning district.

Decision: Approved

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to approve BA10-034 with the following conditions:

- 1. Compliance with the site plans submitted; and*
- 2. A one-year time limit from the date of approval with which to submit for and receive a building permit for additions to the primary dwelling that would result in the aggregate roof area of that dwelling being greater than 3,000 square feet. .*
- 3. In the event a building permit for additions to the primary dwelling is issued, all construction relate to the issued permit shall be completed and a final inspection shall be performed within one-year of the date of issuance of the building permit.*
- 4. In the event a building permit is not issued within one-year in conformance with Condition 2, above, or the construction is not completed in conformance with Condition 3, above, this variance shall be revoked, and the applicant shall make all necessary modifications to the detached accessory building to bring about compliance with all applicable requirements of the Mesa Zoning Ordinance.*

Vote: Passed 6-0

Findings:

- 1.1** The case site is a single residence lot initially developed under Maricopa County jurisdiction, annexed into Mesa, and subsequently zoned R1-9. The lot size is in excess of 20,000 sq.ft. (over twice the minimum lot size for this zoning district), and is relatively flat, with little or no change on topography.
- 1.2** The applicant inherited the present circumstances from a previous owner, who applied for and received a building permit, but did not complete all of the necessary work needed to bring the entire project into compliance with Section 11-13-2(B) of the Mesa Zoning Ordinance.
- 1.3** The applicant's justification did not meet the criteria for a variance. No hardship or special set of circumstances existed that related specifically to the site, nor prevented compliance with the applicable requirements for limiting the roof area of detached accessory buildings in residence districts.
- 1.4** The detached building in question did comply with location and building height requirements. In the event sufficient roof area was added to the primary dwelling, the detached building could comply with Zoning Ordinance requirements.
- 1.5** Providing a short but enforceable time period to bring about compliance allows the applicant a

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chance to construct the necessary addition, or mandate modifications to the detached building in the event the time period expires without additions being made to the primary dwelling.

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Case No.: BA10-035 (PLN2010-00129)

Location: 7750 East Broadway Road lots 39, 347, 362, 599, 612, 659, 815, 822, and 909 (PLN2010-00129)

Subject: Requesting a variance to allow a reduction of the side yard in an RV park in the R-2-PAD zoning district.

Decision: Approved

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to approve BA10-035 with the following conditions:

1. *Compliance with the sign plans submitted, except as modified by the conditions listed below.*
2. *Minimum setbacks for lots 39, 347, 362, 599, 612, 659, 815, 822, and 909 are: 7-feet front, 5-feet rear, sides 3-feet for the RV side and 5-feet for the carport side.*
3. *Under no circumstance shall a unit be closer than 6-feet from the adjacent unit.*
4. *Compliance with all requirements of the Building Safety Division in the issuance of building permits.*

Vote: Passed 6-0

Findings:

1.1 Carriage Manor RV Resort was developed in the mid to late 1980's. This subdivision has established setbacks of 7-feet in the front, 5-feet in the rear, and 5-foot side setbacks.

1.2 As required by the neighborhood notification process, the HOA notified all property owners and residents within the subdivision and property owner's within the subdivision and did not receive any negative comment from the residents. At the time of this report, staff had not been contacted by any homeowner's regarding this request.

1.3 The setback change will only affect 9 lots. (lots 39, 347, 362, 599, 612, 659, 815, 833 and 909) None of these lots are adjacent to one another. The approval only affect lots where the property owner has a recreational vehicle that falls under the following definition: A motor home designed to provide temporary living quarters for recreational, camping, or travel use and built on or permanently attached to a self-propelled motor vehicle chassis, or on a chassis cab or van that is an integral part of the completed vehicle.

1.4 The affected lots all have Arizona Rooms, sheds and awnings that comply with the existing setbacks. The new non-permanent RV's that these lot owners park on the lots for the winter season have multiple slide-outs, adding additional living space when the RV is parked. The slide-outs cantilever into the 5-foot side yard setback, but can be retracted at any time. The slide-outs are allowed to encroach up to 2-feet into the required 5-foot side yard setback, leaving a remaining setback of 3-foot for one side.

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1.5 The encroachment into the setback is justified because the units are only parked on the lot for up to 6-months of the year. The applicant identified that the slide-outs do not go all the way to the ground. They noted that this is a newer feature in the RV's and some of the new designs offer up to 4 slide-outs. The applicant identified that the slide-outs are not permanent and can be retracted at any time.

1.6 Other RV parks have been granted deviations to the setback requirements to allow 3-foot setbacks with a minimum 6-foot separation between units. Carriage Manor is an RV subdivision and the lots are individually owned rather than leased. Lots in parks where the property is leased, have a 3-foot side setback requirement.

1.7 While not justification for a variance, it is important to note that the 2-foot encroachment has minimal impact and no detrimental effect on neighboring properties

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Case No.: BA10-036 (PLN2010-00140)

Location: 1605 South Stapley Drive

Subject: Requesting a Special Use Permit to modify an existing Comprehensive Sign Plan in the M-1-CUP zoning district.

Decision: Approved

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to approve BA10-036 with the following conditions:

- 1. Compliance with the Comprehensive Sign Plan, as submitted.*
- 2. Review and approval of any required sign permits.*
- 3. No trees are to be removed as a direct result of this sign installation. Please coordinate the placement of this sign accordingly.*

Vote: Passed 7-0

Findings:

- 1.1** The Comprehensive Sign Plan allows three (3) signs per pad building with 160 s.f. of total sign area for the three (3) signs.
- 1.2** The third sign exceeds the maximum allowable square footage for all signage by only ten (10') feet.
- 1.3** Due to the size and unique location of this building in relation to the US 60, the minor increase in square footage is not detrimental to this site or others in this area.

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Case No.: BA10-037 (PLN2010-00145)

Location: 559 North Pasadena Street

Subject: Requesting a Substantial Conformance Improvement Permit to allow the development of an additional dwelling unit in the R-2 zoning district.

Decision: Withdrawn

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to withdraw BA10-037.

Vote: Passed 6-0

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Case No.: BA10-038 (PLN2010-00149)

Location: 2502 East Ivy Street

Subject: Requesting a variance to allow a structure to: 1) encroach into the side yard; 2) exceed the maximum height allowed in a side yard; and 3) be located closer than six feet from the existing home, all in the R1-9 zoning district.

Decision: Denied

Summary: John Nichter, the property owner, represented the case and explained that the structure was existing when he purchased the property eleven years ago. Chair McCray asked Mr. Nichter if he understood the non-compliance issues and what changes he was willing to make. Mr. Nichter replied that he did. Discussion ensued regarding the areas of non-compliance with regards to the structure. Chair McCray asked about the 8' PUE, Mr. Sheffield commented that the Board of Adjustment was not acting on the encroachment into the PUE. There was a possibility that the applicant could get approval for an encroachment, but that item was not for the Board's consideration.

Boardmember Thomas commented that there was enough lot area to retain the structure with modifications that would allow the structure to come in to code compliance.

Boardmember Labadie commented that he could support and approve the case with some revisions and the approval of an encroachment into the 8' PUE or the removal of the rear 6' of the structure so that it does not encroach into the rear 8' PUE. Staff member Guevara stated that if the Board was to make a motion to approve the case, these conditions of approval should be added: 1) applicant to obtain an encroachment into the PUE for the 6' of the structure that is in the PUE; 2) if the request for encroachment into the PUE is denied, the applicant must remove the rear 6' portion of the structure that encroaches into the 8' PUE; 3) the request shall comply with all requirements of the Building Safety Division with regards to a building permit; 4) compliance with the site plan submitted except as modified by these conditions. Mr. Sheffield asked Boardmember Labadie for clarification as to whether he intends approval of the 5' separation between the residence and the structure. Boardmember Labadie responded that his motion is to approve the location as submitted with staff conditions of approval.

1st Motion: It was moved by Boardmember Labadie to approve BA10-038 with conditions suggested by staff. The motion failed due to lack of a second.

2nd Motion: It was moved by Boardmember Thomas, seconded by Boardmember Stradling to deny BA10-038.

Vote: 4-2 (Labadie and Hitchins nay)

Findings:

- 1.1** The variance was requested to allow a structure to encroach nine feet into the required ten foot side yard. The structure is located within five feet of the home and is therefore considered attached, by definition. When encroaching into the rear and side yard setbacks, Code permits

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detached accessory buildings with a maximum height of ten feet provided they are located within the rear $\frac{1}{4}$ of the lot. To be considered a detached accessory building, a minimum six-foot separation is required from the house. In the present location, the structure is attached to the house and thus, by definition, the house is encroaching into the side and rear setbacks

- 1.2 The subject site is Lot 27 of the Russell Manor subdivision. This subdivision requires seven and ten-foot side yard setbacks. The lot has an eight foot Public Utility Easement adjacent to the rear property line. As constructed, the structure encroaches approximately six feet into the eight foot Public Utility Easement.
- 1.3 The structure was constructed without the benefit of a building permit.
- 1.4 The applicant provided a Justification and Compatibility Statement that indicated the following: 1) He has lived in his home for over 10 years with the existing structure; 2) He is permanently disabled and a purchased the home because it was single story and included the structure that he uses as a workshop which helps the owner deal with depression and constant pain; and 3) There are other properties in the neighborhood that have structures constructed on the property line.
- 1.5 Staff reviewed the Justification and Compatibility statement provided by the applicant and the applicant did not provide sufficient evidence and did not feel that the applicant provided sufficient justification for the variance.
- 1.6 The subject parcel is of similar size (10,494 s.f.) and orientation to other parcels in the vicinity and exceeds the minimum required size for lots in the R1-9 zoning district (9,000 s.f.). The applicant did not provide sufficient justification related to ***special or unique conditions*** of the land to support the variance.
- 1.7 Planning Division records indicated that a few variances were granted in the vicinity, none were for similar structures and the approvals involved encroachments into the rear yard on either larger or odd shape lots.
- 1.8 Due to the size of the parcel, options are available to the applicant to locate the structure within the buildable area or as a detached structure. No variance would be required if the applicant removed the front ten feet of the structure in order to maintain a six foot separation from the home and within the rear $\frac{1}{4}$ of the lot.

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Case No.: BA10-039 (PLN2010-00157)

Location: 214 North Gilbert Road

Subject: Requesting a Special Use Permit to allow a Comprehensive Sign Plan in the R-3 zoning district.
Decision: Approved

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to approve BA10-039 with the following conditions:

- 1. The mounted cabinet display shall not exceed 32 sq. ft. in sign area.*
- 2. The monument sign shall not exceed 32 sq. ft. in sign area and shall not exceed 10' - 6" overall height from curb grade.*
- 3. If the proposed sign is to be placed in a PUF, an encroachment permit shall be obtained through the City of Mesa's Engineering Department.*
- 4. Compliance with all requirements of the Building Safety Division with regard to the issuance of sign permits.*

Vote: 6-0

Findings:

- 1.1** The applicant justified the request due to the road widening project that removed 15 feet from the frontage of his property and the placement of three Salt River Project pad mounted transformers in the location where the previous monument sign was installed.
- 1.2** The road widening project included a seven (7') foot tall CMU screen wall that was installed across the northern half of their frontage on Gilbert Road. The additional sign height requested allows a portion of the sign to be visible above the screen wall.
- 1.3** Special circumstances and conditions existed that justified allowing a monument sign to be installed at 10'- 6" in height to address visibility concerns.
- 1.4** This site is allowed 28 square feet of sign area per code. Staff acknowledges the need for an increase in sign area. The variance justifies an increase to 64 total square feet to be divided between the monument sign and the attached cabinet display.

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Case No.: BA10-040 (PLN2010-00158)

Location: 6838 East Superstition Springs Blvd

Subject: Requesting a Special Use Permit to modify an existing Comprehensive Sign Plan in the C-2-DMP zoning district.

Decision: Approved with conditions.

Summary: This case was on the consent agenda and not discussed on an individual basis.

Motion: It was moved by Boardmember von Borstel, seconded by Boardmember Labadie to approve BA10-040 with the following conditions:

1. *Compliance with the Comprehensive Sign Plan as submitted.*
2. *Review and approval of any required sign permits.*

Vote: 6-0

Findings:

- 1.1 The Board previously approved a Comprehensive Sign Plan and a modification of that plan for this commercial center. In each of these two previous approvals, the Board noted the large scale of the building, the distance of the building from Superstition Springs Blvd, and the proximity of the building to the US-60 freeway. The conditions are cited as reason for approving larger than standard sign allowances.
- 1.2 Because of an oversight, 4'-high letters were installed, and are 4" higher than the letter heights approved by the Board in 1999. These letters have been in place for 11 years with no comment. From the street, these larger letters appear proportionate to the building mass, and do not contribute to sign clutter on the site.
- 1.3 The applicant is replacing the letters at the installed sizes, with a few modifications for spacing. Again, given the use of the installed letter sizes, the replacement letters appear to work well with the conditions present on the site.

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A. Other Business:

1. Request for reconsideration of Case BA10-022, 445 North Stapley Drive

A letter from Scott Hudson, the applicant, was read by Chair McCray requesting a reconsideration of BA10-022. Mr. Sheffield commented on the request and explained the process.

After a brief discussion, Chair McCray asked for a motion to reconsider BA10-022. There was no motion and the request for reconsideration failed due to lack of a motion.

Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

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